



Report: Reviews of Discharges and Dismissals Based on Sexual Orientation

September 2021

The estimated cost of this report or study for the Department of Defense is approximately \$5,000 for the 2021 Fiscal Year.
This includes \$0 in expenses and \$3,800 in DoD labor.

EXECUTIVE SUMMARY

Section 525 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), titled "Reviews of Discharges and Dismissals Based on Sexual Orientation," requires the Secretary of Defense to submit a report on the number of former members of the Armed Forces who were discharged or dismissed as a result of a Department of Defense policy regarding sexual orientation, and who applied to the Secretary of the relevant Military Department on or after September 21, 2011, for an upgrade to the characterization of their discharge.

Section 525 requires the report to provide the number of applicants and the percentages of applications granted or denied. Section 525 further requires that the information be disaggregated by Armed Force, grade, characterization of discharge originally received, and characterization of discharge received following application for an upgrade.

Section 525(c) requires, if the information could be determined without a case-by-case review, the number of applications that were denied and in which the discharge or dismissal was based solely on the member's misconduct. Limitations in legacy case management systems cannot produce this data without a case-by-case review, and it is therefore not provided.

The Department consulted with the Military Departments and the Coast Guard in preparing this report. Certain other information required by section 525 cannot be produced by legacy case management systems, and would only be available through an extensive case-by-case review, conducted by hand, of applications submitted over a ten-year period. Accordingly, each Armed Force provided information responsive to section 525 regarding the applications for an upgrade of a discharge to the extent their legacy case management systems would allow.

BACKGROUND

SEC. 525. Report Regarding Reviews of Discharges and Dismissals Based on Sexual Orientation.

(a) **REPORT REQUIRED.**—Not later than September 30, 2021, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding the number of former members of the Armed Forces who—

- (1) were discharged or dismissed from the Armed Forces;
- (2) on or after September 21, 2011, applied to the Secretary of the military department concerned for an upgrade in the characterization of such discharge or dismissal; and

(3) assert in such application that such discharge or dismissal arose from a policy of the Department of Defense regarding the sexual orientation of a member before September 21, 2011.

(b) **ELEMENTS.**—The report under this section shall include the following:

(1) The number of applications described in subsection (a) and the percentages of such applications granted and denied, disaggregated by—

- (A) Armed Force;

- (B) grade;
- (C) characterization of discharge or dismissal originally received; and
- (D) characterization of discharge or dismissal received pursuant to an application described in subsection (a)(2).

(2) If the Secretary can determine the number without reviewing applications described in subsection (a) on a case-by-case basis, the number of such applications—

- (A) that were denied; and
- (B) in which the discharge or dismissal was based solely on misconduct of the discharged or dismissed member.

(c) PUBLICATION.—Not later than 90 days after the Secretary submits the report under this section, the Secretary shall publish the report on a publicly accessible website of the Department of Defense.

REPORT

The Military Departments' and Coast Guard's Boards for Correction of Military/Naval Records (BCM/NR) and the Discharge Review Boards (DRB) for each Armed Force review discharge upgrade requests. All of these Boards may modify a discharge status. Each respective BCM/NR generally reviews requests for discharge upgrades when the Service member: was discharged more than 15 years ago; was discharged through a general court-martial; or applied to a DRB before, and their request was denied. Generally, when applicants do not meet these requirements, the request for a discharge upgrade is reviewed by the cognizant Military Department's or Coast Guard's DRB. See, 10 U.S.C. § 1553; DoD Directive 1332.41, "Boards for Correction of Military Records and Discharge Review Boards," March 8, 2004; and DoD Instruction 1332.28, "Discharge Review Board (DRB) Procedures and Standards," April 4, 2004.

This report contains statistics from each of the Armed Force's BCM/NR and DRB. As discussed herein, the case management systems employed by the BCM/NR and DRB's are technologically limited and varying and, therefore, do not collect all information identified in section 525. Although each BCM/NR and DRB can identify whether an application for a discharge upgrade was granted or denied, a case-by-case review, by hand, of every historical application is required in some situations in order to collect the grade, original characterization of discharge, and upgraded characterization for each application.¹ Individual review of case files was performed where possible.

Army

The Army Board for Correction of Military Records (ABCMR) and the Army Discharge Review Board (ADRB) review and adjudicate discharge upgrades for their Service. The Army uses the Army Review Boards Agency (ARBA) Case Tracking System (ACTS) for case management. Although ACTS allows the Army to track cases, it does not contain readily-available, detailed information regarding each application. The program provides only an overview of each Service member's record, which may include, more recently, the final discharge characterization of service following each Board's review. To identify details such as

¹ Initial and final discharge percentages are based upon available case information and not all adjudicated cases.

grade, characterization of original discharge, or in some cases the upgraded discharge characterization, requires a case-by-case review of each action.

Army	ADRB	ABCNR	Total
Total Applications - Army	130	284	414
Total Applications Granted - Army	120	249	369
Total Applications Denied - Army	10	35	45
Percentage Granted - Army	92.31%	87.68%	89.13%
Percentage Denied - Army	7.69%	14.06%	10.87%

Initial Discharge Characterization	Initial %	Final %
Entry Level	0.38%	0%
Bad Conduct Discharge	1.14%	0.74%
Dishonorable Discharge	1.14%	0.37%
General Discharge	38.02%	7.06%
Under Other Than Honorable	30.80%	7.81%
Honorable	28.52%	84.01%

Navy and Marine Corps

The Board for Correction of Naval Records (BCNR) and the Navy Discharge Review Board (NDRB) review and adjudicate discharge upgrades for the Navy and Marine Corps. The current case tracking system capabilities do not support the retrieval of grades for reporting purposes. The statistics for the original and final characterizations of service are available as the result of improved data entry processes implemented in 2017. Any data requested beyond the scope of these defined data fields would require a case-by-case review of individual case documentation.

The NDRB uses a basic "NDRB Database" for case management, which does not contain detailed information regarding each Service member's record, such as rank and grade, but generally does track character of original discharge and upgraded discharge character. Such information is available only if recorded during adjudication of each matter and recorded in the NDRB Applicant's individual file. As a regular practice, the NDRB does not record such information in its NDRB Database.

Navy	NDRB	BCNR	Total
Total Applications - Navy	118	537	655
Total Applications Granted - Navy	90	412	502
Total Applications Denied - Navy	26	125	151
Percentage Granted - Navy	76.27%	76.72%	76.64%
Percentage Denied - Navy	22.03%	23.28%	23.05%

Initial Discharge Characterization	Initial %	Final %
Entry Level	0.36%	0%
Bad Conduct Discharge	1.08%	0.74%
Dishonorable Discharge	0.36%	0%
General Discharge	30.32%	20.07%
Under Other Than Honorable	42.96%	13.01%
Honorable	26.35%	66.17%

Marine Corps	NDRB	BCNR	Total
Total Applications - USMC	69	135	204
Total Applications Granted - USMC	58	108	166
Total Applications Denied - USMC	11	27	38
Percentage Granted - USMC	84.06%	80.00%	81.37%
Percentage Denied - USMC	15.94%	20.00%	18.63%

Initial Discharge Characterization	Initial %	Final %
Entry Level	5.95%	1.23%
Bad Conduct Discharge	1.19%	0%
Dishonorable Discharge	0%	0%
General Discharge	46.43%	13.58%
Under Other Than Honorable	36.90%	11.11%
Honorable	10.71%	74.07%

Air Force and Space Force

The Air Force Board for Correction of Military Records (AFBCMR) and the Air Force Discharge Review Board (AFDRB) review and adjudicate discharge upgrades for their Military

Department. The Air Force Boards use the Case Management Tracking Analysis and Reporting System (CMTARS) application for case management. The Air Force Review Boards Agency (AFRBA) routinely extracts data from CMTARS for operations management and reporting purposes, but such data mining and analysis capability is limited to discrete data fields available in the system, as well as manual entry of data in those fields. Anything requested beyond the scope of those defined data fields requires a labor-intensive manual review of individual case documentation.

AFRBA did not start cataloging sexual orientation cases in the current manner (including cases involving Don't Ask Don't Tell) until Fiscal Year 2015. For AFBCMR specifically, some of the requested data is not available in CMTARS, or was not populated consistently. AFRBA is working to improve its data integrity and is in the process of adding additional AFBCMR fields, which will be used on going-forward basis.

Air Force	AFDRB	AFBCMR	Total
Total Applications - Air Force	11	101	112
Total Applications Granted - Air Force	7	80	87
Total Applications Denied - Air Force	4	21	25
Percentage Granted - Air Force	63.64%	79.21%	77.68%
Percentage Denied - Air Force	36.36%	20.79%	22.32%

Initial Discharge Characterization	Initial %	Final %
Entry Level	1.96%	9.09%
Bad Conduct Discharge	0%	0%
Dishonorable Discharge	0%	0%
General Discharge	56.86%	27.27%
Under Other Than Honorable	23.53%	0%
Honorable	17.65%	63.64%

Coast Guard²

The Coast Guard Board for Correction of Military Records (CGBCMR) and the Coast Guard Discharge Review Board (CGDRB) review and adjudicate discharge upgrades for their Service. The CGBCMR uses basic commercial-off-the-shelf software to maintain an electronic database called FileMaker Pro 15.0, while the CGDRB uses a Microsoft Access database. The CGBCMR staff can extract certain data from the database for reporting purposes, but the extractable data are limited to current discrete data fields, which have changed over time, and depend on the accuracy and consistency of the manual entry of data in those fields. Anything requested beyond the scope of those defined data fields requires case-by-case review of individual case documentation. In the past, creating new fields in the database has resulted in the loss of prior fields and data, and while the new fields may be available to all cases, the CGBCMR staff is unable to populate new fields retroactively. The CGDRB is able to extract data from the database for reporting purposes, but such data mining and analysis capability is limited to specific data fields created in the system, as well as manual entry of data in those fields.

² Section 525 directs the Secretary of Defense to submit a report involving "former members of the Armed Forces" who applied to the Secretary of the Military Department for a service discharge characterization upgrade. The Military Departments are the Departments of the Army, Navy and Air Force; however, the term "Armed Forces" includes the Coast Guard. Moreover, 14 U.S.C. § 101 provides that the Coast Guard "shall be a Military Service and a branch of the armed forces of the United States at all times." The Coast Guard's BCMR process is administered by the Department of Homeland Security, vice DoD. Accordingly, to meet the express language of section 525, and provide the most complete data set possible, this report includes the same data from the Coast Guard as is provided for DoD's Military Services.

Coast Guard	CGDRB	CGBCMR	Total
Total Applications - USCG	8	8	16
Total Applications Granted - USCG	8	7	15
Total Applications Denied - USCG	0	1	1
Percentage Granted - USCG	100%	87.5%	93.75%
Percentage Denied - USCG	0%	12.5%	6.25%

Initial Discharge Characterization	Initial %	Final %
Entry Level	0%	0%
Bad Conduct Discharge	0%	0%
Dishonorable Discharge	0%	0%
General Discharge	6.25%	0%
Under Other Than Honorable	25.00%	6.25%
Honorable	68.75%	93.75%

DoD Discharge Appeal Review Board

Established in April 2021, the DoD Discharge Appeal Review Board (DARB) serves as a new board of appeals for Service members with separation dates on or after December 20, 2019. The DARB provides final review of discharge or dismissal characterization upgrade requests when petitioners have exhausted all available administrative remedies. As of the date of this report, no cases relevant to the subject matter in section 525 have been adjudicated.

CONCLUSION

The Department of Defense is dedicated to ensuring that all requests for upgrades in the characterization of discharge or dismissal are thoroughly and accurately reviewed consistent with 10 U.S.C. §§ 1552 and 1553. The Military Departments are continually working to improve and upgrade their legacy data retention systems. The metrics presented above reveal that the discharge review process is employed effectively by each Military Department and the Coast Guard to implement changes in policy regarding sexual orientation, and has resulted in a significant number of upgrades to Honorable service characterizations. Furthermore, cases involving an initial discharge characterization as Honorable also received favorable outcomes by updating the separation codes, narrative reasons, and/or reenlistment codes associated with their Honorable discharge.